

2026 JUDICIAL REVIEW

2024 - 2025 MONTANA
SUPREME COURT
JUDICIAL DECISIONS



**MONTANA
CHAMBER OF
COMMERCE**

MONTANA SUPREME COURT JUDICIAL REVIEW

The Montana Chamber of Commerce has the longest running, regular review of a state judicial branch of any organization in the country. This review for the prior two years is a continuation of that long-standing tradition to shed light on this important governmental branch that all too often does not get the attention it deserves.

We conduct this review of decisions from the Montana Supreme Court to help our members and the public understand the work of our top court. We hope this important work allows the business community to better understand and have their voice heard in our system of government.

Following past practices, the Judicial Review covers a two-year period of Montana Supreme Court decisions (2024-2025) that had an impact on the business community. In conducting regular reviews spanning four decades, it allows us to more easily track trends in judicial rulings that can affect Montana's economy.

Just like with previous Judicial Reviews, each individual justice is evaluated for their stance in cases where they participated in a decision. We understand judges are bound by the rule of law where federal and state constitutions or prior precedent may control the outcome in a particular case rather than pro-business or anti-business positions. The hope of the business community is that the justices will follow the rule of law and precedent to foster predictability and certainty in the legal arena.

In preparation of this biennial Judicial Review, a strict set of criteria was used to produce the most objective report possible. Input from affected businesses, trade associations, and attorneys allowed the Montana Chamber to independently verify the research conducted in specific legal categories.

Cases selected must have had an impact, either positive or negative, on business in the state or affect general liability standards. Business on business litigation was generally avoided where possible.



2024 Supreme Court



Chief Justice Swanson



Justice Bidegaray

ABOUT THE MONTANA SUPREME COURT

The Montana Supreme Court is the state's highest court, and its only appellate court. Since 1972, terms of the justices were set at eight years with staggered elections each cycle. When Montana's new state constitution was passed, there were five justice positions on the Court – a chief justice position and four associate justice positions. The 1979 Legislature added two associate justice positions to the Court to help with workload issues, thereby establishing the Court's current number of seven justices overall.

States have different systems for how judges end up on the bench. In Montana, we elect our judges. In races for the Montana Supreme Court, any qualified candidate may run for a position regardless of whether an incumbent justice is running for reelection or it is an open seat. In circumstances when three or more candidates are running for a justice position, voters narrow the field down to two candidates for the general election. When a justice runs for reelection without a challenger, the justice must still receive a majority vote by Montanans in a general election to be retained.

Since the first Montana Chamber Judicial Review in 1990, the Court has changed considerably in its composition and ideological direction. This makes these regular reviews all the more important. The 1990s and early 2000s saw a Montana Supreme Court that overturned long-standing precedents, adopted minority legal positions that were very anti-business, and generally created more uncertainty for the business community. Court opinions at the time would often come with a justice or two who dissented from the Court's direction.

Over the last 10-12 years, we have seen more unanimity in the Court on decisions, more opinions where just five justices participate, and a more regular use of "non-citable" opinions. There is less volatility in some ways as the Court follows some of its prior precedents, but there are also recent instances we have seen where a majority of justices issue opinions that are out-of-step with most states.

This report includes a review of the work of nine Montana Supreme Court Justices over the prior two year period. During this cycle, there were two new justices (including the Chief Justice position) elected following the retirement of two people on the Court. Justice biographies are available on the Court's website. Regardless of how the Judicial Review scores an individual justice, we appreciate each person's public service to the state of Montana.

Chief Justice Mike McGrath: Elected in a contested 2008 race and retained in 2016. He retired at the end of his term in 2024.

Associate Justice Beth Baker: Elected in a contested 2010 race and retained by voters in 2018. She is retiring at the end of 2026, and a contest to replace her will be on the ballot in November 2026.

Associate Justice Ingrid Gustafson: Appointed in 2017 to fill the remainder of a term, retained by voters in 2018, and re-elected to a full eight-year term in a contested 2022 race.

Associate Justice Laurie McKinnon: Elected in contested 2012 race and re-elected in a contested 2020 race.

Associate Justice Jim Rice: Appointed in 2001 to fill the remainder of a term, retained by voters in 2002 and 2006, and re-elected in 2014 and 2022 in contested races.

Associate Justice Dirk Sandefur: Elected in a contested 2016 race. He retired at the end of his single term in 2024.

Associate Justice Jim Shea: Appointed in 2014 to fill the remainder of a term and retained by voters in 2016 and 2020.

Chief Justice Cory Swanson: Elected to a full eight-year term to lead the Court in 2024 and was sworn in at the beginning of 2025.

Associate Justice Katherine Bidegaray: Election to a full eight-year term as an associate justice in 2024 and was sworn in at the beginning of 2025.

SCORING

Cases in the Judicial Review are divided into categories: Banking, Contract, Employment, Insurance, Jurisdiction, Land Use/Natural Resource, Medical Malpractice, Taxation, Tort, Workers' Compensation, and Other. Each case was assigned one category for purposes of this Review even though some cases could be included in multiple categories.

Individual justices were evaluated in comparison to the pro-business position the Montana Chamber identified. When justices concurred in part or dissented in part, the Montana Chamber reviewed the written nature of their opinion and made an evaluation of how the justice interpreted the overall case.

Cases were all weighted the same for purposes of scoring the Review. Justices received a 0 to 100 percent Business Score for the 2024-2025 period, and their lifetime score on the Court was also highlighted. Justices were not scored when they did not participate in a case. The total cases in which a justice participated is reflected in the data. The Business Score is calculated by dividing the total number of cases where a justice agreed with the pro-business position of the Montana Chamber by the total number of cases in which the justice participated.



indicates a business-positive decision



indicates a business-negative decision

EMPLOYMENT/LABOR



Fowler v. DOJ/MHP, DA 22-424, 2/13/2024

An MHP trooper who was being investigated and potentially disciplined for mishandling investigations resigned and then sued claiming he was constructively discharged. He resigned prior to the conclusion of the collective bargaining agreement's grievance process. The State moved for summary judgment in district court because the WDEA does not apply to collective bargaining and the trooper did not exhaust administrative remedies. The District Court denied and allowed the case to go to trial. The Montana Supreme Court reversed the lower court saying the trooper could not sue outside of the agreement and there were no exceptions. (McKinnon, McGrath, Shea, Sandefur, Gustafson)



Winsor v. Commissioner of Securities and Insurance, DA 23-298, 3/5/2024

An attorney in state government was terminated for falsifying his work hours. He sued CSI alleging wrongful discharge, defamation, infliction of emotional distress, and other claims. All claims except wrongful discharge and emotional distress were thrown out, and a jury found CSI had cause to terminate him and found it liable for emotional distress damages. CSI appealed, arguing the plaintiff could not claim emotional distress for something arising out of a legitimate termination. The Montana Supreme Court disagreed and allowed the emotional distress verdict and damages to stand because the plaintiff had alleged conduct that had happened before his termination. (Gustafson, McGrath, Shea, McKinnon, Sandefur)



Zastroupil v. DLI, DA 23-471, 6/11/2024

A worker who was laid off from the restaurant business during the COVID pandemic refused to return to work when the company called her back and after health guidance from the state. Her unemployment benefits were discontinued, and she appealed through the process. The district court found benefits were properly denied since she had been offered a position at her old workplace. The Montana Supreme Court said there was no error in any of the record that would give them a reason to reverse. (Rice, McGrath, McKinnon, Baker, Gustafson)

 Weiner v. St. Peter's Health, DA 23-224, 7/30/2024

An oncologist that was terminated from a hospital sued for wrongful termination, civil conspiracy, and violation of due process. He sought to amend his complaint after the deadline and was denied. He filed a second lawsuit trying to add in the claims that were not included in the original complaint. The district court granted the hospital's motion to dismiss on grounds of res judicata. The Montana Supreme Court upheld this decision, finding the rules surrounding claim-splitting and res judicata are meant to encourage judicial economy and shielding parties from vexatious concurrent and duplicative litigation. (McKinnon, Shea, Baker, Gustafson, Rice)

 Strable v. Carisch Inc. dba Arby's, DA 23-652, 8/27/2024

A 17-year old applied to be a manager at Arby's and was declined because she was not 18. She sued for age discrimination, which she had done 300 times before with other companies and received more than \$350,000 in settlements. In the midst of finalizing a potential settlement, the plaintiff's attorney withdrew. Frustrated at the lack of settlement, the plaintiff Strable filed a complaint asserting breach of contract, bad faith, and equitable estoppel arising. The district court granted Arby's motion for summary judgment finding that the contractual element of consent was not met because Arby's "had not yet had affirmative relief provisions imposed on them." The Montana Supreme Court upheld the decision against the vexatious litigant saying Arby's had a right to understand what affirmative relief provisions it would be agreeing to in a settlement. (Gustafson, McGrath, Baker, McKinnon, Rice)

 McBroom and Lewis-Baca v. BOPA and MUTD, DA 24-455, 8/27/2024

Two disciplined workers filed an unfair labor practices complaint against the Missoula Urban Transportation District (MUTD). They had conducted union activities during work hours, and their union had decided to settle with MUTD. Decision at the administrative

and district court levels all concluded they filed their complaint too late. The Montana Supreme Court rejected the workers' arguments that public policy should allow the time limitation to be overlooked. (McKinnon, Bidegaray, Baker, Shea, Gustafson)

 Weiner v. St. Peter's Health et al, DA 24-101, 2/11/2025

St. Peter's Health terminated the employment of an oncologist for treating patients with chemotherapy that had no evidence of cancer, overprescribing narcotics without documentation, and other issues. The oncologist sued for numerous claims arising out of its peer review process. St. Peter's claimed it and the peer reviewers were immune from state lawsuits based on federal law in the Health Care Quality Improvement Act. The district court agreed and granted summary judgment to St. Peter's. The Montana Supreme Court upheld the decision saying the federal law protects doctors and staff who participate in the process. (McKinnon, Shea, Gustafson, Baker, Rice)

 Qlarant Integrity Solutions v. Guthneck, DA 24-194, 3/25/2025

Plaintiff sued after he was terminated in 2021 for not providing his vaccination status pursuant to federal executive orders relating to federal contractors. He pointed to state law that made it unlawful for an employer to discriminate based on immunity status. The hearings officer and lower court all found state law was preempted by the federal executive order. The Montana Supreme Court upheld. (Gustafson, McKinnon, Baker, Shea)

 Netzer v. State of Montana, DA 24-0501, 11/4/2025

The Legislature passed a law barring non-healthcare employers from requiring their employees to get the COVID-19 vaccine and allows an employee to claim discrimination by an employer based on vaccine status. A law firm sued claiming the law violated its constitutional rights as an employer. The Montana Supreme Court affirmed the lower court's dismissal of the constitutional claims. (Baker, Swanson, Shea, McKinnon, Bidegaray, Gustafson, Rice)

HOUSING

✓ *Montanans Against Irresponsible Densification v. State of Montana*, DA 24-39, 9/3/2024

The 2023 Legislature passed two bills to encourage more affordable housing development, which was met with a lawsuit from a group of homeowners in single-family neighborhoods. The district judge granted a preliminary injunction against the state to prevent the laws from going into effect. On appeal, the Montana Supreme Court reversed the lower court because it had not followed newly altered standards for injunctions that were also passed by the 2023 Legislature as a legal reform measure. (Baker, McGrath, McKinnon, Shea, Rice)



INSURANCE

✓ *Johnson v. State Farm Ins.*, DA 24-0204, 9/2/2025

Plaintiffs sued their own insurer when nominal property losses were not covered in the insurance payout from an auto accident. When the plaintiffs recovered those losses from the at-fault driver's insurance, they attempted to have their attorney's fees paid by their own insurer. The Montana Supreme Court upheld the lower court's dismissal of the claims because the nominal property damages not reimbursed by the insurer were not covered in the insurer's policy. (Shea, Gustafson, McKinnon, Baker, Rice)

MEDICAL MALPRACTICE

✓ *Muscle v. Santin*, DA 22-600, 2/20/2024

The plaintiff sued for medical malpractice after skin removal procedures were not to her liking. The doctor moved for summary judgment claiming that the plaintiff failed to establish that he departed from the standard and that departure more likely than not caused her injury. The District Court granted part of the summary judgment and allowed the other claims to go to trial where the jury found for the doctor. The Montana Supreme Court upheld the lower court proceedings. (Baker, McGrath, Gustafson, Rice)

✓ *Dodds v. Tierney and Benefis Health System*, DA 23-319, 3/12/2024

A plaintiff sued a doctor for medical malpractice relating to a knee surgery, but did not follow the rules concerning service. The plaintiff also sued a hospital that was not involved in the medical care. The district court granted motions to dismiss and the Montana Supreme Court upheld that ruling. (Gustafson, McGrath, Shea, Baker, Rice)

✓ *Estate of Phillips v. Logan Health and Robbins*, DA 23-375, 8/13/2024

A widow filed a complaint against a hospital and medical provider for wrongful death, negligent infliction of emotional distress, loss of consortium, and other claims for the death of her husband. The hospital and medical provider were not served. A second complaint was filed and then served on the defendants well after statutory deadlines for such claims. The defendants moved to dismiss the claims as time-barred. The district court granted that motion. On appeal, the Montana Supreme Court agreed finding no exceptions applied that would allow the claims to be served more than two years after the date of the medical malpractice. (McKinnon, Rice, Sandefur, Baker, Shea)

PERMITTING/NATURAL RESOURCES



Held et al. v. Montana, DA 23-575, 1/16/2024

16 youths filed a constitutional challenge to a state law limiting agencies' consideration of greenhouse gas emissions and climate impacts in MEPA. The District Court ultimately held that Plaintiffs had justiciable claims and the statute violated their right to a clean & healthful environment by contributing to Montana and global GHG emissions and climate impacts. The State sought a stay from the Montana Supreme Court while the case was on appeal, and the stay request was denied. (McGrath, Shea, McKinnon, Baker, Gustafson denied the stay; Rice and Sandefur would have granted the stay.)



Montana Trout Unlimited v. DEQ, DA 22-406, 2/26/2024

Tintina Montana applied to construct Black Butte Copper Mine, an underground mine expected to conduct active mining for 13 years followed by 4 years for reclamation and closure, on private land. DEQ spent 5 years in review of the application, rejecting it 3 times for deficiencies. After extensive review under MEPA involving 17 internal experts and 42 consultants including hydrologists, geologists, geochemists, engineers, and biologists and 2 public comment periods including 7 public meetings it issued a permit. Several conservation organizations challenged the permit. The District Court agreed with them that DEQ had failed to meet requirements of law in granting the permit. The Montana Supreme Court majority reversed the District Court and gave deference to the experts in the state agency that conducted the review. (Baker, McGrath, Shea, Rice, Sandefur)
The dissent claimed the agency failed to thoroughly investigate environmental implications of the project. (Gustafson and McKinnon)



MEIC v. PSC and NorthWestern Energy, DA 22-436, 3/19/2024

PSC and NorthWestern Energy appealed orders from a district judge reversing actions by the PSC. The PSC had waived NWE's obligations to purchase energy from the Community Renewable Energy Project in 2015 and 2016 because certain laws had been repealed through HB 576 and contained a retroactivity clause. The Montana Supreme Court upheld the district court saying the retroactivity clause put in by the Legislature did not apply (Shea, McKinnon, Gustafson, Baker, Sandefur)



Cottonwood Environmental Law Center v. DEQ and Yellowstone Mountain Club, DA 23-479, 5/14/2024

Plaintiff sued the state after it approved a MPDES permit for Yellowstone Mountain Club to discharge treated domestic wastewater after its use as artificial snow. The claim was the state should have analyzed impacts of pharmaceuticals reaching surface waters. The district court rejected the plaintiff's arguments and entered a final judgment for the state. The Montana Supreme Court upheld that ruling, saying the plaintiff's claims lacked specificity that would obligate the state to have responded more thoroughly than it did. (McGrath, Shea, Gustafson, Sandefur, Rice)



Protect the Clearwater v. DEQ and LHC Inc., DA 23-524, 8/20/2024

LHC Inc. applied for a dryland openpit mining permit and DEQ approved the application. Protect the Clearwater appealed to both the Board of Environmental Review BER and filed a complaint in District Court. It then applied for an ex parte TRO and preliminary injunction asserting that DEQ erred in the permitting process, which was granted by the district court. The Montana Supreme Court found the lower court erred when it entertained Protect the Clearwater's application for a preliminary injunction as an independent action when it had already filed a separate complaint under Title 75. (Baker, McGrath, McKinnon, Shea, Rice)



indicates a business-positive decision



indicates a business-negative decision

PERMITTING/NATURAL RESOURCES (cont.)



MEIC v. DEQ and NorthWestern Energy, DA 23-0225, 1/3/2025

NWE received permits from DEQ to construct and operate a natural gas-fired power plant in Laurel. Plaintiffs sued alleging the review was inadequate and a state law prohibiting GHG analysis in the MEPA process was unconstitutional. The District Court agreed with plaintiffs and vacated the permit. On appeal, a majority of Montana Supreme Court sustained the lower court's ruling on the unconstitutionality of the statute. It reversed the remedy of vacating the permit, allowing the air quality permit to stand. The Court noted that it has not held that DEQ is required to analyze GHG emissions for every potential permitting action. (Baker, Shea, McGrath) Two justices signed a specially concurring opinion agreeing with the reversal of the permit vacatur, but would conclude that without a regulatory structure in place for GHG emissions, further MEPA review was not called for. (Rice, Sandefur) Two other Justices agreed with the Court that DEQ's MEPA review was insufficient, but they disagreed with the decision to reinstate the permit and allow the plant to continue operating. (Gustafson, McKinnon)



Trout Unlimited v. DNRC, DA 23-0268, 1/2/2025

Environmental groups sued the state and Tintina resources on a water use permit that was issued for a new copper mine in Meagher County. The plaintiffs alleged the agency's determination under the state statute violated Article IX of the Montana constitution and the proposed mine should not be exempt from the Montana Water Use Act (MWUC). The district court rejected the challenge and the plaintiffs appealed. The majority in the Montana Supreme Court rejected the constitutional arguments saying the MWUC was implemented to regulate water rights, but that water use regulations were under the purview of the

Legislature. The company's proposed removal and disposal of water did not constitute either a "use" or a "waste" of water, which was consistent with other agency determinations. (Rice, McGrath, Baker, Shea, Sandefur)

The two dissenters would have found the mine's proposal triggered the necessity for a water use permit by DNRC, and would have overturned long-standing case law on the issue. (McKinnon, Gustafson)



Held v. Montana, DA 23-0575, 12/18/2024

A group of young people sued the state alleging law prohibiting GHG assessments in the MEPA process violated their right to a clean and healthful environment. The district court ruled in favor of the young plaintiffs, overturned state laws, and made many "findings of fact" and "conclusions of law" that would effectively outlaw fossil fuel electricity generation into the future. The state appealed. The Montana Supreme Court ruled that "clean and healthful" includes a stable climate system and sustained the district court's decision to overturn the state statute prohibiting GHG analysis in the MEPA process. The majority opinion also contained sweeping statements on climate change that will undoubtedly fuel environmental lawsuits for decades to come. (McGrath, Baker, Shea, McKinnon, Gustafson, Sandefur). The lone dissenter would have found the young plaintiffs lacked standing to bring the claims and the alleged injuries were too abstract. (Rice)



TAX

Bluebird Energy v. DOR, DA 23-280, 1/23/2024

Apache owned oil wells for which it received the “New Well Tax Incentive” before shutting them down and selling to Bluebird Energy. Bluebird installed permanent production facilities costing \$500,000 per well and sought the tax incentive from DOR, which was denied. The dispute landed in District Court where the judge held the tax incentive ran for 18 contiguous months once any production started, rather than production equaling 18 months. The Montana Supreme Court upheld the DOR decision and denied Bluebird Energy the benefits of the tax incentive. (McKinnon, McGrath, Shea, Baker, Sandefur)

TORT

Tackett v. Feller and Moore, DA 23-539, 5/7/2024

The plaintiff was suing a hospital for the death of his wife. While discovery was ongoing, the hospital’s legal firm did depositions of the children. Three minutes into questioning, the plaintiff abruptly ended the deposition saying the depositions were traumatizing. Five days later he sued the lawyer and the law firm conducting the depositions. The lawsuit was dismissed and the plaintiff appealed. The Montana Supreme Court upheld the district court’s decision and found no error with the lower judge’s caution to the plaintiff that he was becoming a vexatious litigant. (Shea, Gustafson, McKinnon, Sandefur, Rice)

Dolls v. Little Big Warm Ranch LLC, DA 23-291, 8/20/2024

In a dispute between parties based on an operating agreement, a jury awarded \$2,420,000 compensatory damages verdict in favor of farm/ranch LLC and against departing members. The jury also awarded \$80,000 punitive damages verdict because it found the departing members acted with malice and actual fraud. On appeal, the Montana Supreme Court reversed the jury verdict on punitive damages finding it improper to have such damages on what amounted to a breach of contract claim. (Baker, McGrath, McKinnon, Shea, Rice)

 indicates a business-positive decision



Hubbell v. Gull Scuba Center, DA 24-25, 10/19/2024

The widow of a man who died in a scuba accident sued the store that rented him the scuba equipment, alleging it should have verified his certifications before renting the equipment. The store moved for summary judgment, and the district court granted it finding the store likely could have rented the equipment had they checked because he had some level of certification. On appeal, the Montana Supreme Court held that the store could not be the cause of the diver’s death because it was allowed to rent to him based on his own certifications and the fact that he was diving with someone else who was certified and could have rented the equipment for the deceased. (Shea, McKinnon, Gustafson, Baker, Rice)

Hughes v. Anderson and Mid-Century Ins., DA 24-215, 12/31/2024

A Montana woman sued her ex-husband for alleged injuries that occurred in an auto-accident six years prior. She alleged North Dakota’s 6-year statute of limitations applied while the ex-husband said she had been diagnosed with a related injury a few weeks after the accident. The District Court held for the ex-husband and applied Montana’s 3-year statute. On appeal, the Montana Supreme Court found the lower court did not err in determining the plaintiff was not entitled to a tolling of the statute. (Shea, McKinnon, Baker, Rice)

 indicates a business-negative decision

TORT (cont.)

Seymour v. State of Montana, DA 23-224, 4/29/2025

The plaintiff sued UM-Western in Dillon for negligence when a piece of exercise equipment he was using had a cable snap and injured him. As the litigation progressed, UM-Western moved for summary judgment because the plaintiff had failed to secure an expert. The motion was granted by the lower court. The Montana Supreme Court rejected the plaintiff's claims that this case was analogous to a slip-and-fall case where an expert is not necessary. (Swanson, Shea, Bidegaray, McKinnon, Gustafson)

Mullee v. Winter Sports Inc. dba Whitefish Mountain Resort, DA 24-356, 6/3/2025

A very experienced skier who had skied the same hill many times injured his hip after a fall. He sued the ski hill for negligence and premises liability. The district court granted summary judgment for the ski hill, determining the accident was an inherent risk of the sport. The Montana Supreme Court agreed, pointing out that a skier who had been on this hill since the 70s and gone over this same area more than 100 times and falls are an inherent risk of skiing. (Gustafson, McKinnon, Swanson, Shea, Baker, Bidegaray, Rice)

Shahood v. Butte-Silver Bow County, DA 25-0036, 12/16/2025

An accident involving a regular motorist and a county snow grader went to trial where the jury determined the plaintiff motorist was 54% negligent and the county was 46% negligent, which barred recovery for the plaintiff. At the request of the plaintiff, the judge ordered a new trial, and the county appealed. The Montana Supreme Court reversed the new trial order and said there was enough presented at the original trial that would allow the jury to make the apportionment of negligence determination that it did. (Gustafson, Swanson, Shea, McKinnon, Rice)

WORKERS' COMPENSATION

Perea v. AmTrust, DA 24-162, 6/24/25

This case involved a question of how compensation determined when a petitioner is working 2 simultaneous jobs at the time of injury, is then TTD from the first job, but the injury has no impact on the job. After quitting the first job where the injury occurred, he had surgery for the injury. This required him to quit the second job, for which he sought lost wages under workers' comp. The Montana Supreme Court reversed the workers' compensation court finding the insurer had improperly calculated the benefits and awarded a penalty. (Shea, McKinnon, Baker, Gustafson, Rice)

OTHER

Merila v. Burke, DA 23-247, 1/16/2024

A business partnership dispute erupted when Burke notified Merila he was amending previous tax returns and moving partnership funds to accounts she could not access. Merila filed a complaint under the Uniform Partnership Act seeking Burke's expulsion from the partnership. Meanwhile, Burke was convicted of federal charges of aiding and assisting tax fraud on business unrelated to the partnership. The District Court found sufficient grounds to expel Burke from the partnership, and the decision was upheld by the Montana Supreme Court. (Baker, Rice, Gustafson, Sandefur, McKinnon)

Denis v. Spanish Peaks Mountain Club, DA 24-414, 1/22/2025

A man who resided in Spanish Peaks area, but was not a member of the Club, filed a request for an injunction to get a parking permit when it was not reinstated. All lower court decisions upheld the right of the Club to deny a parking permit. The Montana Supreme Court upheld the right of the Club to deny a permit as it is a membership benefit under the Club's membership plan. (Shea, McKinnon, Baker, Gustafson, Rice)



Monarch Heating & Cooling v. Petra, DA 24-760, 8/19/2025

A primary contractor and subcontractor had a contract with an arbitration clause. When the subcontractor sued, the contractor answered the complaint and moved to compel arbitration. The Court upheld the lower judge's determination that the contractor had delayed asserting the arbitration clause too long. (Shea, McKinnon, Gustafson, Rice)

The Chief Justice dissented, pointing out that there are several other cases where the Court in similar circumstances found no waiver. (Swanson)



Schubert v. Toepp, DA 24-0675, 10/25/2025

Two neighbors had a property dispute around an easement and ultimately agreed to an MOU for the use. After conflict persisted, the neighbors ended up litigating the dispute. One of the parties (Schubert) persisted in raising issues outside of the MOU. The district court found for the Toepps and awarded them attorneys fees because of the Schuberts' additional requests after mediation had concluded. The Montana Supreme Court upheld the lower court award of attorney fees because the Schuberts had unreasonably multiplied the court proceedings. (McKinnon, Swanson, Bidegaray, Shea, Baker)



indicates a business-positive decision



indicates a business-negative decision

Montana Supreme Court Case Review

CASE SUMMARY	Court	Baker	Bidegaray**	Gustafson	McGrath*	McKinnon	Rice	Sandefur*	Shea	Swanson**
2024-2025 Cases (Pro-Justice/Total Participation)	27/35	27/33	5/6	17/27	12/16	21/32	23/26	9/12	23/31	5/6
2024-2025 Judicial Score	77.1%	75.9%	83.3%	63.0%	75%	65.6%	88.5%	75%	74.2%	83.3%
Career Cases (Pro-Justice/Total Participation)		176/257	5/6	63/102	168/282	174/208	322/411	91/133	117/178	5/6
Career Judicial Score		68.5%	83.3%	61.8%	60.4%	83.7%	78.1%	70.0%	65.7%	83.3%

	Court	Baker	Bidegaray**	Gustafson	McGrath*	McKinnon	Rice	Sandefur*	Shea	Swanson**
EMPLOYMENT										
<i>Fowler v. DOJ/MHP</i>	✓			✓	✓	✓		✓	✓	
<i>Winsor v. Commissioner of Securities and Insurance</i>	✗	✗		✗	✗	✗			✗	
<i>Zastroupil v. DLI</i>	✓	✓		✓	✓	✓	✓			
<i>Weiner v. St. Peter's Health</i>	✓	✓		✓		✓	✓		✓	
<i>Strable v. Carisch Inc., dba Arby's</i>	✓	✓		✓	✓	✓	✓			
<i>McBroom and Lewis-Baca v. MUTD</i>	✓	✓	✓	✓		✓			✓	
<i>Weiner v. St. Peter's Health</i>	✓	✓		✓		✓	✓		✓	
<i>Qlarant Integrity Solutions v. Guthneck</i>	✓	✓		✓		✓			✓	
<i>Netzer v. State</i>	✗	✗	✗	✗		✗	✗		✗	✗
HOUSING										
<i>Montanans Against Irresponsible Densification v. State</i>	✓	✓			✓	✓	✓		✓	
INSURANCE										
<i>Johnson v. State Farm Ins.</i>	✓	✓		✓		✓	✓		✓	
MEDICAL MALPRACTICE										
<i>Muscle v. Santin</i>	✓	✓		✓	✓		✓			
<i>Dodds v. Tierney and Benefis Health Systems</i>	✓	✓		✓	✓		✓		✓	
<i>Estate of Phillips v. Logan Health and Robbins</i>	✓	✓				✓	✓	✓	✓	



indicates a business-positive decision



indicates a business-negative decision

	Court	Baker	Bidegaray**	Gustafson	McGrath*	McKinnon	Rice	Sandefur*	Shea	Swanson**
PERMITTING/NATURAL RESOURCES										
<i>Held et al. v. Montana</i>	✗	✗		✗	✗	✗	✓	✓	✗	
<i>Montana Trout Unlimited v. DEQ</i>	✓	✓		✗	✓	✗	✓	✓	✓	
<i>MEIC v. PSC and NorthWestern Energy</i>	✗	✗		✗		✗		✗	✗	
<i>Cottonwood Environmental Law Center v. DEQ</i>	✓			✓	✓		✓	✓	✓	
<i>Protect the Clearwater v. DEQ and LHC Inc.</i>	✓	✓			✓	✓	✓		✓	
<i>MEIC v. DEQ and NorthWestern Energy</i>	✓	✓		✗	✓	✗	✓	✓	✓	
<i>Trout Unlimited v. DNRC</i>	✓	✓		✗	✓	✗	✓	✓	✓	
<i>Held v. Montana</i>	✗	✗		✗	✗	✗	✓	✗	✗	
TAX										
<i>Bluebird Energy v. DOR</i>	✗	✗			✗	✗		✗	✗	
TORT										
<i>Tackett v. Feller and Moore</i>	✓			✓		✓	✓	✓	✓	
<i>Dolls v. Little Big Warm Ranch</i>	✓	✓			✓	✓	✓		✓	
<i>Hubbell v. Gull Scuba Center</i>	✓	✓	✓			✓	✓		✓	
<i>Hughes v. Anderson and Mid-Century Ins.</i>	✓	✓				✓	✓		✓	
<i>Seymour v. State</i>	✓		✓	✓		✓			✓	✓
<i>Mullee v. Winter Sports Inc. dba Whitefish Mountain Resort</i>	✓	✓	✓	✓		✓	✓		✓	✓
<i>Shahood v. Butte-Silver Bow County</i>	✓			✓		✓	✓		✓	✓
WORKERS' COMPENSATION										
<i>Perea v. AmTrust</i>	✗	✗		✗		✗	✗		✗	
OTHER										
<i>Merila v. Burke</i>	✓	✓		✓		✓	✓			
<i>Denis v. Spanish Peaks Mountain Club</i>	✓	✓		✓		✓			✓	
<i>Monarch Heating & Cooling v. Petra</i>	✗			✗		✗	✗		✗	✓
<i>Schubert v. Toepp</i>	✓	✓	✓			✓			✓	✓

THE MONTANA WORKERS' COMPENSATION COURT

In February, the Montana Chamber had the opportunity to check-in with Workers' Compensation Court Judge, Lee Bruner, on the first year and a half of his service in that position. Given how important the workers' compensation system and dispute resolution for work comp claims is to the business community, we reached out to Judge Bruner to ask him questions about his background, his first impressions of the job, his priorities in resolving cases, and any plans for the future.

JUDGE LEE BRUNER



Judge Bruner was nominated for this role by Gov. Gianforte and assumed office in September 2023.

Please share anything about your background, experience, family and such to help Chamber members know who Judge Lee Bruner is.

I am a lifelong Montanan, born and raised in Southwest Montana. My family has deep roots in Montana going back generations in mining, education, ranching, and agriculture. My mother was a schoolteacher, my father worked at the smelter.

After graduating from Butte Central High School, I served on active duty in the United States Air Force. I later earned a degree in computer science, a bachelor's degree in theoretical physics from Montana State University and a Juris Doctor from the University of Montana School of Law. I spent most of my legal career as a civil litigation attorney, primarily handling medical negligence, employment law, tort, and environmental cases, almost always advocating for Montana businesses.

My wife, Pollann, and I have been married since 1995 and have three grown sons. We also operate a multigenerational farming and ranching operation south of Whitehall. Outside of work, the pursuits of family, agriculture, and community service occupy most of my time. I serve as President of the Silver Bow Veterans Treatment Court, helping veterans in the legal system and struggling with addiction issues. I serve as Vice President of Jefferson Valley Ambulance, a non-profit providing emergency medical services in Jefferson County. I am a licensed EMT and volunteer on our ambulance crew some nights and weekends. I remain somewhat active in the local American Legion. I am an active member of the statewide sheep producers association. I was recently appointed by United States Secretary of Agriculture Brooke L. Rollins to serve on the United States Lamb Board. These are all volunteer positions.

A CONVERSATION WITH JUDGE BRUNER

Why did you decide to seek the workers' compensation court judgeship? Did you always see yourself as seeking a judicial office earlier in your legal career?

I did not set out early in my career with a plan to become a judge. Like many attorneys, I focused on being a good advocate and serving my clients well. The opportunity to apply for the Workers' Compensation Court arose while I was serving as Deputy Clerk of the Montana Supreme Court and practicing part-time, and it struck me as interesting, challenging, and meaningful public service.

My background—years of litigation involving physical injury, insurance, damages, and administrative law, combined with firsthand experience in agriculture and construction—aligned well with the mission of the Workers' Compensation Court. I also had personal experience early in life with a workplace injury where the system failed, and later as an employer where the system worked exactly as intended. Those experiences left a lasting impression and made this role particularly meaningful to me.

How do you like serving as a judge so far? What has been the most unexpected part of serving on the bench (perhaps one good thing and one bad thing)?

I have enjoyed the work a great deal. It is intellectually demanding, fact-intensive, and consequential for the people and businesses involved. Workers' compensation law is nuanced, and Montana's statutes change regularly, so there is never a shortage of issues to analyze.

One positive surprise has been how engaged and professional the work comp bar is. It is a relatively small community, but the level of preparation and expertise is impressive. A challenge—though not unexpected—has been the volume of material and the responsibility of being both the judge and fact-finder, particularly in cases involving unrepresented parties. That requires patience, some long hours, and careful attention to ensure fairness.

While the workers' compensation system plays a crucial role in our business climate, most businesses are probably not super familiar with the workers' compensation court. What are some things businesses should know?

First, the Workers' Compensation Court exists to keep the system functioning as intended—to resolve disputes efficiently and fairly so businesses can continue operating and workers can receive timely benefits when injured.

Second, the system is designed to provide predictability. Businesses benefit from knowing that workplace injuries are handled through a defined statutory framework rather than open-ended civil litigation. Finally, prompt and proper claims handling matters. Montana law requires in-state claims examiners and timely decision-making, and those requirements are enforced. When the system works well, it protects both workers and employers. Workers get prompt resolution, employers get predictable results, both sides get fair and impartial decisions. It's a good system.



A CONVERSATION WITH JUDGE BRUNER

The workers' compensation court has now been around for 50 years. Have you looked at trends in case loads and settlements?

We handle about 700, more or less, matters a year. The trend is a steady increase, which seems consistent with a growing workforce in Montana.

Consistent law, and consistent application of that law, leads to resolution without court involvement. I think Montana is in a good place there. The vast majority of the cases before our court reach a mutually acceptable settlement proposal submitted to the Court. I review every one of those, and most are approved without further Court involvement.

There are disputes, and these tend to involve narrower, more technical disputes than in decades past, often centered on statutory interpretation or medical evidence rather than broad liability questions.

As your readers are aware, the employment model is changing. Uber drivers, DoorDash delivery drivers, independent contractors, leased workers, temporary workers, work from home, remote workers, some of who are not even located in the United States, undocumented workers and a seemingly endless list of new employment relationship types are all challenging to incorporate into the Montana Workers Compensation framework.

Professionals solve problems, and there will always be new and challenging problems to solve.

What's your role in policy changes? Will you recommend substantive changes in workers' compensation law?

My role is not to make policy but to apply the law as written by the Legislature. Substantive changes to workers' compensation law are the Legislature's responsibility.

Where I do see an appropriate role is in the process and procedure—how the court operates, how cases move, and how filings and hearings are handled. Improvements in efficiency, clarity, and accessibility can make a real difference

without altering substantive rights. If systemic issues become apparent, I believe it is appropriate to share observations with policymakers, but always with respect for separation of powers.

A recent example involved guardianships. Suppose a worker was killed on the job, and left two minor children behind. Those children need a guardian appointed to represent their interests, and a conservator appointed to manage the award for the benefit of the children. The legislature enacted, in part at my request, some legislation granting authority to this court to make those appointments. It improves efficiency, reduces cost, and leads to a timely resolution. I believe that is an example of the very limited role where the Court may insert itself into the legislative process.

The workers' compensation court is organized under the Department of Labor rather than the judicial branch. Does that make sense for the future?

Actually, we just changed that in the last legislature. HB 516 carried by Representative Walsh and with nearly unanimous bi-partisan support moved the Court to the Judicial branch. The primary drivers of this move were the ability to access software, resources and the existing structure in Judiciary to support courts.

This has been a solid success. We have just this month completed fully integrating into the Montana Court management software. We are running below budget, moving work through the Court quickly. The mechanics of running the Court, HR, IT, budgeting, electronic file management, security and the back office functions moved over smoothly. Commissioner Swanson at Department of Labor was solid help and support in this process, and the judiciary has given us outstanding support.

There is an opportunity to expand the jurisdiction of the Workers' Compensation Court to relieve some of the caseload from the district court's, while allowing expedited resolution of civil cases for the parties. Some areas that

seem a natural fit are wrongful discharge cases, appeals of medical licensing board cases, environmental permitting disputes for businesses and other business and medical related subjects. This Court has the infrastructure and staff to expand its service at small cost to the taxpayers.

You are appointed and confirmed by the Senate, while nearly every other judge runs for office. What are the pros and cons?

The appointment system emphasizes professional qualifications and experience, which is important for a highly specialized court like this one. It allows candidates to be evaluated on expertise rather than campaign skills. I think there is solid merit to appointing judges based on their experience, qualifications and record, rather than on campaign skills and special interest financial campaign support.

The Chief Justice has noted concerns about access to attorneys. In the workers' compensation system, is the number of attorneys too few, too many, or just right?

For the cases that have significant injury and wage loss, there is financial incentive for attorneys to accept these cases. Those parties seem to have no problem retaining counsel. Cases with small medical expenses, and minimal wage loss are not as attractive to attorneys, and many of those claimants either proceed pro-se, or do not pursue a claim at all.

This Court has a history of providing good information to the public about the process. We see many individuals work themselves through the process and obtain a reasonable result. There are some that do not.

What advice would you give to attorneys practicing in front of you?

We are all in the problem solving business, and I expect everyone to be working toward a prompt and fair resolution for the injured worker.

Workers' Compensation is unlike traditional civil litigation in

that the purpose is to provide medical care and help workers who are able to get back to work.

Clear, straightforward, well-organized briefs that identify the key facts and applicable law are far more persuasive than excessive filings. Avoid gamesmanship. The court values professionalism, candor, and cooperation.

At least two previous workers' compensation judges became Montana Supreme Court justices. Would you ever consider running for an elective judicial office?

We all have core principles that guide our life. One of mine is a common one. "For everyone to whom much is given, from him much will be required; and to whom much has been committed, of him they will ask the more." Luke 12:48

If a free society, I believe adults have a responsibility and duty to give of themselves to promote the success of the community as a whole.

I like public service. Beyond my day job, I volunteer in a number of public service positions, giving up my nights and weekends to help my fellow Montanans. I have responsibility to carefully use the resources available to provide a valuable and efficient service to the taxpayers. That is who I am, what I believe, and I will do my best to continue that service in whatever position I am asked to serve.

One thing I have learned in 65 years is that I have no ability to see the future.

The Montana Chamber would like to extend its deep gratitude to Judge Bruner for his willingness to talk to us about his work. We are appreciative of his public service as Workers' Compensation Court Judge and wish him well in the remaining four years in his term.



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